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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,588	12/09/2004	Alexander Fuchs	LU 6021 (US)	1330

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EXAMINER	
NUTTER, NATHAN M	

ART UNIT	PAPER NUMBER
1796	

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12/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/517,588	FUCHS ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

In response to the amendment filed 7 December 2007, the following is placed in effect.

The rejection of claim 19 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is hereby expressly withdrawn.

The rejection of claim 26 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps, is hereby expressly withdrawn.

The rejection of claims 17-20, 22, 24, 26 and 27 under 35 U.S.C. 102(b) as being anticipated by Hűffer et al (US 5,773,516), is hereby expressly withdrawn.

The rejection of claims 17-20 and 24-27 under 35 U.S.C. 103(a) as being unpatentable over Mochizuki et al (US 6,511,755), is hereby expressly withdrawn.

The rejection of claims 17, 19-21 and 23-27 under 35 U.S.C. 103(a) as being unpatentable over Delaite et al (US 6,586,528), is hereby expressly withdrawn.

The following new grounds of rejection are being made.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 26 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation of a "combination" of "extruding, (and) injection molding" is not shown by the Specification, as originally filed, at page 21 (lines 16-21) as applicants contend.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 17-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 9-15 of copending Application No. 10/517,580 (Fuchs et al US 2006/0167185). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims embrace the polymers and their compositional limitations as herein recited and claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-20, 22 and 25-30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fischer et al (US 6,248,829), newly cited.

Note the Abstract, column 1 (lines 35-38 and 47-56), column 2 (lines 30-51), column 3 (line 56) to column 4 (line 5), column 4 (line 38) to column 9 (line 67), column 12 (lines 32-36), the many Examples and the claims, particularly claim 6, of the patent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 17-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al (US 6,248,829) as applied to claims 17-20, 22 and 25-30 above, and further in view of Mehta et al (US 6,583,227), newly cited.

The patent to Fischer et al does not teach the inclusion of a nucleant additive in the disclosed composition.

The reference to Mehta et al teaches at column 18 (lines 6-17) additives that are "commonly employed with plastics" including the polypropylene resins taught by the reference, include nucleants.

Subsequent use of a nucleant, as taught by Mehta et al, in the composition of Fischer et al for the benefits thereof would have been prima facie obvious to a skilled artisan.

Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al (US 6,635,715), newly cited.

The reference to Datta et al teaches the production of a reactor blend of a propylene copolymer blend that may comprise a propylene copolymer, designated as the First Polymer Component (FPC), having an alpha olefin content overlapping with that recited herein for the second copolymer at 10 to 30% by weight at column 5 (line 65) to column 6 (line 46), which alpha olefin may be ethylene, with the first recited copolymer, designated as the Second Polymer Component (SPC), having an alpha olefin content (ethylene) overlapping with that recited herein at 5 to 20% by weight at

column 8 (lines 24-49). The range for inclusion of the two polymers is shown at the Abstract. The contemplated molecular weights and MWD are shown at column 9 (lines 34 et seq.). Note the Examples.

Although the reference is silent as regards the haze values, a skilled artisan producing an identical product would have a high expectation to achieve the same haze values recited herein. Likewise, the amount of extractables would be expected, or easily controlled, as crosslink density will determine soluble fractions and a skilled artisan would know to manipulate these values for desired end-use characteristics. As such, a skilled artisan would have a high level of expectation of success following the teachings of the reference to achieve the claimed inventions.

Response to Arguments

Applicant's arguments filed 7 December 2007 have been fully considered but they are not persuasive.

With regard to the provisional rejection of claims 17-30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 9-15 of copending Application No. 10/517,580 (Fuchs et al US 2006/0167185), no Terminal Disclaimer has been found.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan M. Nutter
Primary Examiner
Art Unit 1796

nmn

21 December 2007